

ONEIDA COUNTY PLANNING & ZONING
June 7, 2006
1:00 P.M. – COMMITTEE ROOM #2
2:00 P.M. REGULAR MEETING – COMMITTEE ROOM #2
2ND FLOOR, ONEIDA COUNTY COURT HOUSE

Members present: Chairman Bob Metropulos
Scott Holewinski
Frank Greb – excused absent
Ted Cushing
Larry Greschner

Department staff present: Karl Jennrich, Zoning Director
Pete Wegner, Assistant Zoning Director
Steve Osterman, Planning Manager
Nadine Wilson, Land Use Specialist
Mary Bartelt, Typist III

Other County Staff: Larry Heath, Corporation Counsel

See Attached Guest List:

1. Call to order.

Chairman Metropulos called the meeting to order at 1:00 P.M., in accordance with the Wisconsin Open Meeting Law.

2. Discussion/decision to approve the amended agenda.

MOTION: (Ted Cushing/Larry Greschner) to approve the June 7th 2006 amended agenda. With all members present voting “aye” motion carries.

3. It is anticipated that the Committee may meet in Closed Session pursuant to Wisconsin Statutes, Section 19.85 (1)(g), conferring with legal counsel concerning strategy to be adopted by the governmental body with respect to litigation in which it is or is likely to become involved. A roll call vote will be taken to go into closed session.

MOTION: (Ted Cushing/Scott Holewinski) to enter into Closed Session, Roll Call Vote: Scott Holewinski “aye”, Larry Greschner “aye”, Ted Cushing “aye” and Bob Metropulos “aye”. Frank Greb – absent. Motion carries.

Time: 1:05 P.M.

4. A roll call vote will be taken to return to open session

MOTION: (Ted Cushing/Larry Greschner) to return to open session. Roll Call Vote: Scott Holewinski “aye”, Larry Greschner “aye”, Ted Cushing “aye” and Bob Metropulos “aye”. Frank Greb – absent. Motion carries.

Time: 1:54 P.M.

For the record, the Committee conferred with legal counsel regarding possible litigation.

5. Discussion/decision concerning outdoor fireworks display/sales at Krist Oil/Citgo Gas Station, Donn Atanasoff, owner, on property being described as part of the Village of Woodruff, Section 2, T39N, R6E, in the Town of Woodruff, PIN# WR 608.

Mr. Jennrich explained to the committee that Mr. Donn Atanasoff approached Kurt Bloss, Land Use Specialist, in the P & Z Minocqua Office and asked about possibly having an outdoor fireworks display. Mr. Bloss discussed this with Mr. Jennrich and Mr. Jennrich believes that Mr. Atanasoff would need a Conditional Use Permit. Mr. Jennrich sent letters to Mr. Atanasoff on May 10, 2006, May 12, 2006 and June 5, 2006 regarding this matter.

Mr. Jennrich reads the June 5, 2006 letter into the record. EXHIBIT #1.

Mr. Atanasoff filed for two conditional use permits:

1. Conditional Use Permit #1105-78 – Construction of Citgo Quick Mart, a combination self-service gas station and limited line grocery
2. Conditional Use Permit #1584-93 – For the construction of a new convenience store, with canopy addition, buried fuel storage tanks and diesel fuel island. Furthermore, it stated “Krist Oil Company of 303 Selden Road, Iron River, Michigan, 49935. The project is to replace their current convenience store with a new 76’ x 50’ building, with a new 24’ x 28’ addition to the existing canopy. To install new underground fuel storage tanks and diesel fuel island.

Outdoor display was not covered under either of the CUPS applied for.

Mr. Atanasoff believes that he does not have to go through the Conditional Use process again.

Mr. Atanasoff stated that the Conditional Use Permit already covers the outdoor operations. “What we really have here is an ordinance problem.” “I have extensively reviewed the zoning ordinance and basically I summarized that in my May 23, 2006 letter.” “Your ordinance says that a Conditional Use Permit is required when you have a retail business involving drive through or drive up components or has any outdoor operations.” “This site has been operating with all three of these, drive up, drive through and outdoor operations since 1978.” “Your zoning ordinance says absolutely nothing about fireworks and the Town of Minocqua does not have an ordinance regarding fireworks and what this mean legally -----.”

Mr. Larry Greschner, “Yes, we do Donn and it refers to the State statute also.”

Mr. Atanasoff, “Exactly, that’s fine, the State does regulate fireworks, certain types are allowed to be sold, there are certain ones which are approved in the State of Wisconsin and there are other requirements, such as, no closer then 50’ from gas pumps or residents.” “The site here is large enough to where those things can be accomplished.” “The bottom line is, our legal theory here is simply if you are asking us to apply for a new conditional use permit, we already have outdoor operations, technically what you are doing is revoking the old one and requiring us to get another one.”

Chair Metropulos, “But you are interpreting these outdoor sales for gas, so that allows you to put up a stand for outside sales of fireworks.”

Mr. Atanasoff, “It really doesn’t matter, you have to follow your ordinance and I’ll bring something to your attention.” “This weeks Lakeland Times, “Group Wants Wal Mart Held To The Letter of the Law.” “OK, what does that mean?” “I did a little research yesterday and pulled

some case law and I wrote a few things down.” “Conditional Use Permit represents a species of a zoning classification or designation.” “A CUP is merely a type of zoning, which allows a landowner use his property in certain ways.” “Krist Oil already has an approved CUP stating the ordinance.” “A conditional designation is non the less a designation and that is the Rainbow Springs Golf Course vs. Town of Mukwonago, 2005 case.” “Conditional use means a use of land which while appropriate for inclusion within a given district possesses a high likelihood of creating problems with regard to nearby parcels of land or the occupants thereof and which are therefore permitted only subject to the fulfillments of conditions which affectively insure no such problems will be created.” “The sale of gasoline involves all of those activities, in fact, it involves much more traffic.” “It involves the same type of exposure and fire hazards, etc. etc.” “Basically, the line of thinking in conditional use permits is they are certainly authorized as part of the zoning process in Wisconsin and they require the overview of certain things.” “They are basic things, such as, public safety health and welfare, traffic patterns, etc. etc. and in this case fire.” “If you follow the State Statutes whether you are selling gasoline or whether you are selling fireworks, it’s still one and the same thing because the conditional use permit that has been issued to this site already covers those activities and that is not how you people look at it that is how the law looks at it.” “That is critical.” “It does not matter whether you have an opinion about fireworks.” “If you have an opinion about fireworks you need to adopt ordinances that regulate fireworks.” “You do not have one in Oneida County and the Woodruff ordinance defers the State law which once you comply with the State law, you are basically selling a legal product.” “That is what we have here.” “You are not changing the nature of this site in any way and we are basically looking to put a fireworks trailer which is enclosed and made out of metal and fireproof and so forth for a two week period or probably a ten day period.”

Mr. Greschner, “Going through the cup Donn, you mentioned the Town of Woodruff.” “If you go through the CUP process then we will find out if you can locate that 50’ away from residents and/or where gas is being dispatched.”

Mr. Atanasoff, “That’s all we have to do is comply with the State statute.” “The five hundred dollars is penal and requiring a new conditional use permit is affectively revoking the old permit and it is illegal for you to do that in the absence of a compelling reason, which would mean, there’s a violation.” “You have to have a violation before you can revoke a CUP.”

Mr. Cushing, “What kind of fireworks are you trying to sell?”

Mr. Atanasoff, “Legal Wisconsin fireworks.” “Fireworks are not allowed to be shot off on the premises-----.”

Mr. Cushing, “Wisconsin law asks for a location and a time and day that they allow fireworks to be shot off.”

Mr. Atanasoff, “We can do that, we have some land north of the town.” “I think it might be in Arbor Vitae.” “This land is west of the airport.”

Mr. Holewinski, “The bottom line here is that he has a conditional use for outdoor sales for the selling of gasoline and he wants to add fireworks.” “You’re (Mr. Jennrich) interpretation of this is that he needs a new conditional use permit, right?”

Mr. Karl Jennrich, “Yes.” “This is the way we have done it in the past and I believe that the ordinance states that and if Don Atanasoff has legal argument my only recommendation would be that you forward this to Brian Desmond, Assistant Corporation Counsel.”

Mr. Atanasoff, "I've already talked to Brian about this three times." "He is not giving me an answer." "I think he knows that I am right, but I think he knows that somebody needs to appointed the new County attorney." "He's (Brian Desmond) is not disagreeing."

Mr. Holewinski, "Well, at this point, my opinion is to follow staff recommendations and have Brian Desmond, Assistant Corporation Counsel, bring a legal opinion back to us (P & Z Committee)."

Mr. Jennrich, "If Brian Desmond has a different opinion we will have to discuss this again."

6. Discussion/decision concerning hiring outside legal counsel regarding interpretation of Section 9.93 of the Oneida County Zoning and Shoreland Protection Ordinance.

Mr. Jennrich explained to the committee that the P & Z department had a disagreement with Corporation Counsel on the interpretation of 9.93, "legal lots of record". P & Z had authorization to seek outside legal counsel and at one of the last meetings of the previous P & Z Committee, they made a motion not to pursue or seek outside legal counsel. The reason for this was to try to fix the problem instead of spending money for outside legal counsel. Therefore, P & Z staff started the process of developing language to amend 9.93, to look at all lots regardless of age of the lot or when it was created equally, meaning that if you have two side by side lots in a Recreational zoning district, that you need X amount of frontage per additional unit regardless of when the lot was created.

Mr. Holewinski, "Karl, why was it left in there that we exempted prior to certain date?"

Mr. Jennrich, "The concept was that as of May 19, 1999 and because a new shoreland ordinance was created, that those lots existing prior that ordinance should have been treated differently or "grand-fathered in". "This might have come from Reuben Ahlborn."

Mr. Holewinski, "The ordinance has basically forced us to not treat all properties fairly."

Mr. Jennrich, "Correct."

Mr. Holewinski, "The new lots are way too stringent and the old lots, you can build from lot line to lot line and I think we should have one rule which allows both new and old lot the same rules."

MOTION: (Larry Greschner/Scott Holewinski) to not hire outside legal counsel regarding Sec. 9.93. All "aye" on voice vote. Motion carries.

Committee recessed at 2:35 P.M. to conduct the Public Hearing

Committee reconvened at 3:07 P.M. to continue the Regular Meeting

7. Discuss/decision concerning amendments to Section 9.73 Overlay Districts in the Oneida County Zoning & Shoreland Protection Ordinance.

Staff suggested some language to clarify the different overlay districts in Section 9.73 and in that process the previous P & Z Committee suggested to eliminate Section 9.73 entirely and this was forwarded on to the County Board and the board suggested some minor modifications to 9.73. Mr. Jennrich reviewed the changes with the committee. EXHIBIT #2 (June 1, 2006) memo to the P & Z Committee from Karl Jennrich, Zoning Director.

MOTION: (Scott Holewinski/Larry Greschner) to approve the changes received and forward to public hearing with the understanding that Mr. Jennrich sends the changes to Corporation Counsel for review prior to public hearing. All “aye” on voice vote. Motion carries.

8. Departmental operations/activities & status. - **BUSY**

9. Discussion/decision of line item transfers, refunds, purchase orders and bills.

Karl Jennrich, Zoning Director, noted the following Submittals for Payment (Exhibit #3) Mileage and Bills for \$2,852.50

Blanket Purchase Orders for 2006 in the amount of \$841.28 (EXHIBIT #4)

Refunds: Chip Bromann - \$425.00
Ryan Soil Testing - \$175.00
Gruetzmacher - \$150.00
Kathy Strupp - \$60.00 – Staff recommends not to refund.

MOTION: (Scott Holewinski/Larry Greschner) to approve the three refunds and deny the one refund recommended by staff. All “aye” on voice vote. Motion carries.

MOTION: (Scott Holewinski/Ted Cushing) to approve the bills, vouchers, purchase orders and Blanket Purchase orders. All “aye” on voice vote. Motion carries.

10. Discussion/action concerning pending Ordinance Amendment and/or Resolution proposals scheduled for the County Board of Supervisors. **NONE**

11. Communications – **NONE**

12. Public comments. - **NONE**

13. Discussion/decision regarding future agenda items. – Scott Holewinski requests that he would like to discuss the Zoning Staffing Organizational Chart

14. Adjourn.

3:37 PM There being no further matters to lawfully come before the Committee, a motion was made by Larry Greschner, second by Scott Holewinski to adjourn the meeting. With all members present voting “aye”, the motion carried.

Chairman Bob Metropulos

Karl Jennrich Zoning Director